

California Regional Water Quality Control Board
North Coast Region

STAFF REPORT

**PROPOSED AMENDMENT TO THE *WATER QUALITY CONTROL PLAN FOR THE
NORTH COAST REGION* TO SUMMARIZE EXISTING ANTIDEGRADATION
OBJECTIVES**

November 5, 2004

I. SUMMARY

An amendment to the *Water Quality Control Plan for the North Coast Region* (Basin Plan) is proposed with a purpose of summarizing the application of state and federal antidegradation policies to watershed management. This amendment is intended for the convenience of the Basin Plan reader. No new regulatory requirements are proposed by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) as a result of this amendment. This amendment is proposed in response to direction given by the Regional Water Board during the March 2004 Board Meeting. Adding the proposed language to Chapter 3 of the Basin Plan, results in making the Basin Plan more “user-friendly”, for the Board, staff and the public.

II. BACKGROUND AND RATIONALE

The Federal Antidegradation Policy

Antidegradation is based on the spirit, intent, and goals (or purposes) of the federal Clean Water Act (CWA), especially the clause “...restore, and maintain the chemical, physical, and biological integrity of the Nation’s waters” (101(a)) and the provision of 303(a) that made water quality standards under prior law, the “starting point” for CWA water quality requirements. As explained in a memo dated October 7, 1987 by William Attwater, Chief Counsel, State Water Resources Control Board, to the nine Regional Water Boards, “the federal Antidegradation Policy serves as a ‘catchall’ water quality standard to be applied where other water quality standards are not specific enough for a particular waterbody, or where other water quality standards do not address a particular pollutant.”

The first federal antidegradation policy statement was released on February 8, 1968, by the Secretary of the U.S. Department of the Interior. It was included in U.S. EPA’s first Water Quality Standards Regulation (40 CFR 130.17, 40 F.R. 55340-41, November 28, 1975), and was slightly refined and re-promulgated as part of the current program regulation published on November 8, 1983 (48 F.R. 51400, 40 CFR 131.12). Antidegradation requirements and methods for implementing those requirements are minimum conditions to be included in a state’s water quality standards. Water quality standards serve the dual function of establishing water quality goals for a specific waterbody and providing the basis for regulatory controls. Water quality standards apply to both point and non-point sources; accordingly the same is true for the Antidegradation Policy.

The federal Antidegradation Policy represents a three-tiered approach to maintaining and protecting various levels of water quality and its uses (48 F.R. 51400, 40 CFR 131.12). The first level, or tier

(Section 131.12(a) (1)), states that all existing¹ beneficial uses and the level of water quality necessary to protect those uses must be preserved and protected from degradation. Secondly, (Section 131.12(a)(2)) provides protection of actual water quality in areas where the quality of the waters exceed levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water (“fishable / swimmable”). The third tier, 131.23(a) (3) provides special protection of waters for which the ordinary use classifications and water quality criteria are not sufficient. These areas are identified as “Outstanding National Resources Waters” (ONRWs). Waterbodies identified as ONRWs are those that have been specifically designated and identified as important, unique, or sensitive ecologically, but whose water quality may not be adequately characterized by traditional parameters (such as dissolved oxygen, pH, etc.).

The federal Antidegradation Policy applies to surface water regardless of the quality of the water. In allowing an activity to degrade or lower water quality, this policy requires states to ensure that:

1. The activity is necessary to accommodate important economic or social development in the area,
2. Water quality is adequate to protect and fully maintain existing beneficial uses fully, and
3. The highest statutory and regulatory requirements and best management practices for pollution control are achieved.

Under this policy, an activity or discharge would be prohibited if the activity will further lower the quality of surface waters that do not support designated beneficial uses (i.e., impaired waters).

U.S. EPA issued guidance on antidegradation in 1985 and again in 1987. A summary of U.S. EPA’s guidance and other antidegradation issues can be found in the “Delphi Development White Paper: Antidegradation Issues,” prepared on behalf of the TIN/TDS Task Force Under Supervision of the Santa Ana Watershed Project Authority², dated June 1996.

The State Antidegradation Policy (Resolution 68-16)

Resolution 68-16, “Statement of Policy with Respect to Maintaining High Quality of Waters in California,” was adopted by the State Water Resources Control Board (State Water Board) in 1968. U.S. EPA water quality standards regulations require each State to develop, adopt, and retain a statewide “antidegradation” policy regarding water quality standards and establish procedures for its implementation through the water quality management process. The state policy must be consistent with the components detailed in 40 CFR 131.12. Fifteen years after its adoption, in 1983, Resolution 68-16 was determined to comply with this U.S. EPA requirement. The State Water Board has interpreted Resolution 68-16 to incorporate the federal Antidegradation Policy in situations where the federal Antidegradation Policy is applicable. The policy also has been adopted as a water quality objective in all of the State’s regional Water Quality Control Plans, including the North Coast Region’s Basin Plan. Resolution 68-16 establishes the requirement that discharges to waters of the state shall be regulated to achieve the “highest water quality consistent with maximum benefit to the people of the State.”

¹ Existing uses are those that actually occurred on or after November 28, 1975 (date of promulgation of U.S. EPA’s first water quality standards regulation (40 CFR, Section 131.3)), or that the water quality was, or is, suitable to allow such a use to occur.

² The Delphi Development White Paper can be found at http://www.sawpa.org/tintds/documents/RiskSciences/Antideg_White_Paper.pdf

The state policy establishes a two-step process to determine if discharges with the potential to degrade the water quality of surface or groundwater will be allowed. The first step requires that where a discharge will degrade high quality water, the discharge may be allowed only if any resultant change in water quality:

1. Will be consistent with the maximum benefit to the people of the state,
2. Will not unreasonably affect present and anticipated beneficial uses of such water, and
3. Will not result in water quality less than that prescribed in state policies (e.g., water quality objectives in Water Quality Control Plans).

The second step states that any activities that result in discharge to high quality waters are required to use the best practicable treatment or control of the discharge necessary to avoid the occurrence of pollution or nuisance and to maintain the “highest water quality consistent with the maximum benefit to the people of the state.” If such treatment or control results in a discharge that is confined to the maintenance of the existing water quality, then a less stringent level of treatment or control would not be consistent with the intent of Resolution 68-16. The state policy further establishes that if the discharge, even after treatment, unreasonably affects beneficial uses or does not comply with applicable provisions of water quality control plans, the discharge would be prohibited.

The state policy is similar to the federal Antidegradation Policy with the exception that the state policy applies to both high quality surface and ground water, and the federal policy only applies to surface waters. In addition, the state policy applies to both existing and potential beneficial uses and the federal policy only applies to existing uses. Both, the state and federal antidegradation policies acknowledge that minor or repeated activities, even if individually small, can collectively result in violation of antidegradation policies through cumulative effects. This is extremely important, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant. The language proposed for addition to the Basin Plan (see pages 5 – 6) summarizes both the state and the federal policies.

III. ANALYSIS OF ALTERNATIVES

1. No action.

This option includes keeping the current language in Chapter 3 of the Basin Plan which briefly addresses the state and federal antidegradation policies (objectives). Selection of this option does not improve the comprehensibility (or lucidity) of this important topic in the Basin Plan and therefore, continues to allow ambiguities that impair the implementation of these objectives. In addition, staff has found that a majority of stakeholders are not fully aware of the importance of these objectives to the achievement of water quality objectives. Therefore, at a minimum, a summary of the objectives would be beneficial.

2. Adopt language that summarizes the state and federal antidegradation policies (objectives).

As mentioned above, frequently the regulated community are not fully aware of the significance of these objectives. This option would include adding a summary of the objectives to the Basin Plan. This language will ensure that the significance of the policies is transparent to the Board, staff and the public, and therefore ensure the implementation of these water quality objectives. This option is a change without regulatory effect, as it does not propose to include any changes in regulation, and it does not propose to describe implementation of the policies. Language providing a more detailed explanation of the policies would be added to Chapter 3, Water Quality Objectives, replacing the current brief discussion under the heading, “General Objectives.”

3. Adopt language that summarizes the antidegradation policies and also add a discussion related to implementation of the two policies.

Option 3 would include all aspects of Option 2, summarized above, and would also include a strategy for implementation of the state and federal antidegradation policies. Implementation of the antidegradation policies is accomplished through several activities. Such activities include, but are not limited to a discussion of the following: scheduled water quality standards review, waste load allocations (WLAs), total maximum daily loads (TMDLs), and issuance of NPDES and non-NPDES permits. To accomplish the goals of this option, language would be added to the Basin Plan explaining how the state and federal policies are implemented through these activities in addition to summarizing the policies, explained under Option 2.

IV. RECOMMENDED ALTERNATIVE (2)

Regional Water Board staff recommends the adoption of Alternative 2, in order to fully summarize the intention of the state and federal antidegradation policies (objectives) to the Basin Plan reader. The proposed language would provide for clear and definite understanding of the significance of the objectives. Option 1, “No Action,” would not change the current Basin Plan, which is lacking a comprehensive summary of the state and federal antidegradation objectives, resulting in incomplete implementation of these objectives. As the Board, staff, and the regulated community (stakeholders) are made aware of the significance of these objectives, staff’s expectation is that implementation of the objectives through existing programs (i.e. TMDLs, permitting, etc.) will become consistent and straightforward. Option 3 would require a great deal of time and would be a resource intensive project which is not feasible at this time. If it is determined that a need for a project of this type exists, staff would recommend that the project would be better suited for completion by the State Water Board in order to implement a uniform and consistent statewide approach.

The proposed language follows, below in underline and strikeout.

CHANGES TO THE ANTIDEGRADATION LANGUAGE IN THE BASIN PLAN

1. ***Amend the following language from page 3-1.00 (paragraph 4) of the Basin Plan as shown below:***

In addition, the State Water Board “Policy With Respect to Maintaining High Quality Waters in California” (state Antidegradation Policy) also applies. The state policy incorporates the federal Antidegradation Policy, where the federal Antidegradation Policy is applicable.

2. ***Amend the following language from page 3-2.00 of the Basin Plan:***

GENERAL OBJECTIVE

The following objective shall apply to all waters of the Region.

Whenever the existing quality of the water is better than the water quality objectives established herein, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16, ‘Statement of Policy With Respect to Maintaining High Quality Waters in California’, including any revisions thereto. A copy of this policy is included verbatim in the Appendix Section of this Plan.

State Water Resources Control Board (State Board) Resolution No. 68-16 contains the state Antidegradation Policy. It is titled the “Statement of Policy with Respect to Maintaining High Quality Waters in California and is commonly known as “Resolution 68-16.” The State Board has interpreted Resolution No. 68-16 to incorporate the federal Antidegradation Policy where the federal policy applies. (State Board Order WQO 86-17). The federal policy is found at 40 CFR Section 131.12. The state and federal antidegradation policies are included as Appendices to the Basin Plan.

The state Antidegradation Policy applies more comprehensively to water quality changes than the federal policy. In particular, the state policy applies to both groundwater and surface waters whose quality meets or exceeds (better than) water quality objectives. The state policy establishes two conditions that must be met before the quality of high quality waters may be lowered by waste discharges. First, the state must determine that lowering the quality of high quality waters:

1. *Will be consistent with the maximum benefit to the people of the state,*
2. *Will not unreasonably affect present and anticipated beneficial uses of such water, and*
3. *Will not result in water quality less than that prescribed in state policies (e.g., water quality objectives in Water Quality Control Plans).*

Second, any activities that result in discharges to high quality waters are required to a) meet waste discharge requirements that will result in the best practicable treatment or control of the discharge necessary to avoid pollution or nuisance and b) maintain the highest water quality consistent with the maximum

benefit to the people of the state. If such treatment or control results in a discharge that maintains the existing water quality, then a lowering of water quality would not be consistent with Resolution 68-16. Likewise, the discharge could not be allowed under Resolution 68-1; a) if the discharge, even after treatment, would unreasonably affect beneficial uses or b) would not comply with applicable provisions of water quality control plans..

The federal Antidegradation Policy applies to surface waters, regardless of the water quality. Where water quality is better than the minimum necessary to support instream uses, the federal policy requires that quality to be maintained and protected, unless the state finds, after ensuring public participation, that:

1. Such activity is necessary to accommodate important economic or social development in the area in which the waters are located,
2. Water quality is adequate to protect existing beneficial uses¹ fully, and
3. The highest statutory and regulatory requirements for all new and existing point source discharges and all cost-effective and reasonable best management practices for non point source control are achieved.

Under this policy, an activity that results in discharge would be prohibited if the discharge will lower the quality of surface waters that do not currently attain water quality standards.

Both, the state and federal antidegradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in violation of antidegradation policies through cumulative effects, especially, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.

The state and federal antidegradation policies are enforceable independent of this Basin Plan provision. The above summary of the state and federal antidegradation policies is provided merely for the convenience of the reader.

VIII. RECOMMENDATION

Staff recommends that the Regional Water Board adopt Board Resolution R1-2004-0092. (Attachment B), approving the proposed Basin Plan amendment to include language summarizing the state and federal antidegradation policies. Finally, this language serves only to summarize these policies, no new regulation is proposed.

¹ Existing uses are those that actually occurred on or after November 28, 1975 (date of promulgation of USEPA's first water quality standards regulation (Tit. 40, Code of Federal Regulations, Section 131.3)), or that the water quality was, or is, suitable to allow such a use to occur.